

Local election know-how

Vol. 4, No. 98, January 19, 1998

While every member of the Ukrainian policy-making community, and a good proportion of Ukrainians previously rather distant from politics, eagerly debate new developments of the pre-election battles, the Law "On Elections of Deputies of Local Councils and Village, Town and City Chairmen" adopted by the parliament on December 17, 1997, went practically unnoticed by the press and the society. The law, classed by Speaker Oleksandr Moroz among "principally important" and having a direct impact on development of local self-governance, was vetoed by President Kuchma on January 9, 1998.

Arguments and Counter-Arguments

The main point of disagreement between the President and the law-makers was the provision that introduced the election of local authorities in Kyiv, Sevastopol, Simferopol and regional centers according a mixed, majoritarian-proportionate system, while local self-governance bodies of all sub-regional entities were to be elected according to the majoritarian system. In the President's view - this time shared by many of the law-makers - the provision constituted a violation of election rights and discrimination of voters on the basis of their place of residence.

Other major points, criticized by the President, included the provision that allowed the election of up to 120 deputies for any administrative-territorial entity regardless of the number of residents and eligible voters in individual communities, and the provision whereby the necessary condition for being elected to a local council or becoming a mayor was "residence or employment on the territory of that administrative-territorial entity". According to the President, the number of elected representatives in local councils should be based on the number of local residents and differ substantially, depending on the size of a local community: 10 to 20 deputies for communities smaller than 5,000 residents; 15 to 25 deputies for communities of 5,000 to 50,000 residents; 25 to 50 deputies for communities that number from 50,000 to 500,000 residents, and 50 to 75 deputies for major communities of over 500,000 residents. Hence, the President suggested a substantial reduction in number of local authorities, initially proposed by the law-makers. As far as the local residence or employment qualification is concerned, the new law limited the constitutional right to be elected, stipulated by Article 38 of the Constitution, as the Fundamental Law provides for no limitations connected to the place of residence or employment.

Yet another non-democratic norm was the provision that allowed for decisions to be adopted by a simple majority of deputies present at any particular session, thus, opening the way to decision-making by absolute minority of the council.

By far, the most controversial provision of the local election law is Part 5 of Article 47, stipulating that in case two or more candidates gain the same number of votes, the winner is chosen by casting a lot, sanctioned by the local election commission. From the perspective of common sense, the provision nullifies any reason of having elections at all. Instead, Ukrainian voters, many of whom experienced more than one rounds of coming to polling stations in the previous elections, could be offered a possibility to elect their local council and the mayor by choosing the winner in a run-off.

Two days after the Presidential veto, the Verkhovna Rada's Expert Department delivered its judgment with regards of the proposals that had arrived from the Presidential Administration. In an obvious recognition that it is too late to start yet another round of confrontation with the executive branch, the law-makers agreed to reconsider some of the provisions, while stressing they would reject the recommendations they felt to be inappropriate. Specifically, they argued that the Constitution does not set out the election system, and the choice of an election system for local election does not infringe on the election rights of residents of other communities, since they do not participate in this particular election anyway. "The use of a particular system for election of members of local councils ... or a local chairman, as well as the election system itself, may not be regarded as a privilege or an advantage," the law-makers argue, as "they do not create conditions for obtaining material, spiritual, intellectual of other benefits or privileges for voters, and participation in election may not be viewed as a benefit or advantage. They do not create not only legal, but actual advantages, since they are applied to formation of organs of power of different administrative-territorial units that differ in number of residents and

status." Taking into account the potential influence to be gained by councils and mayors as soon as local self-governance bodies adopt their adequate status and access to operating local budgets, the above sounds at least naive.

Furthermore, in the law-makers' view, the President's proposal to reduce the number of local deputies and limit it according to the number of residents in a particular community is less rational and democratic than their own. The small number of local deputies would be enough to perform executive functions, but unable to carry out the broad representative tasks of local self-governance effectively, they argue, adding that the Constitution guarantees equal election rights to citizens, and not equal rights of communities to be represented in councils. Apparently, members of the executive and the legislature will continue debating their perspectives on equality.

Other proposals the MPs intend to ignore are the comment that decision-making only by the deputies present at a session is inadequate.

None of the concessions the parliament appear to be prepared to make are significant. Among the proposals that may be considered, the Expert Department listed the residence/employment qualification, contradictions in defining powers of territorial election commissions, "casting the lot", the order of calling a session of an election commission in the smallest communities, adding a list of acts no longer in force to the chapter on "Transitional Provisions" and the suggestion to take into account the fact that some of the terms of beginning the election process, specified by the new law, cannot be observed due to the shortage of time and must be reduced.

The Presidential veto was readily commented on by several MPs. According to Presidential representative in the parliament Roman Bezsmertnyi, MP who was authorized to present the President's comments to the parliament, the solution could be found in either granting all territorial entities the right to choose their own local election system, or introduction of a single norm that would ensure the general system for all. While the latter seems logical, the former may leave local elections at discretion of current local officials who may use them for their own benefits.

According to Vice Speaker Victor Musiyaka, generally known for his readiness to compromise, the best solution could be to unify the election principle and postpone the local elections till summer or autumn 1998. Petro Sheiko, head of the Parliamentary Committee for Reglament, Deputy Ethics and Provisions for MPs Activities, believes that the Verkhovna Rada does not intend to override the veto and agrees to some 'technical and legal moments' that should be considered. Generally, the delay is not viewed as a factor that may make holding the local elections on March 29, 1998, impossible.

Paradoxically, Ukrainian voters, used to centralized political control, know more about the national election campaign - mainly due to the efforts made by current MPs and pretenders themselves - than about local authorities, supposed to be immediately responsible for their communities' everyday well-being. The local elections are scheduled to take place on the same day as the parliamentary elections. The current practice is that many of local elected representatives and mayors have been dismissed from their positions without any re-elections, and new people have been appointed, who have no legitimate power to perform local self-governance duties. While the fact does not add to local authorities' image, it demonstrates the true weight they may have in the society.